IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE KURIAN JOSEPH

WEDNESDAY, THE 20TH JUNE 2007 / 30TH JYAISHTA 1929

OP.No. 9825 of 2000(T)

PETITIONERS:
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1. **CHITHRADEVI S., JAYANILAYAM, GURUPURAM, ALAPPUZHA DISTRICT.**

2. **K.K.MOHAMMED, KUTTIKKAT HOUSE, AROOKUTTI, CHERTHALA, ALAPPUZHA DISTRICT.**

BY ADV. SRI.M.C.MADHAVAN
SRI.MAHESH MADHAVAN

RESPONDENTS:
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1. **THE DISTRICT MEDICAL OFFICER, DISTRICT AYURVEDA MEDICAL OFFICE, ALAPPUZHA.**

2. **DIRECTOR OF INDIAN SYSTEMS OF MEDICINES, THIRUVANANTHAPURAM.**

3. **THE COMMISSIONER AND SECRETARY TO GOVERNMENT, HEALTH AND FAMILY WELFARE DEPARTMENT, THIRUVANANTHAPURAM.**

4. **THE COMMISSIONER AND SECRETARY TO GOVERNMENT, FINANCE DEPARTMENT, THIRUVANANTHAPURAM.**

BY GOVERNMENT PLEADER SMT.K.R.DEEPA

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 20/06/2007, ALONG WITH OP NO. 15574 OF 2001 THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON CMP. NO.16329/2000 IN OP. NO.9825/2000

DISMISSED

20.06.2007 **SD/- KURIAN JOSEPH, JUDGE**

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE PROCEEDINGS NO.E1 6293/89 DT. 22.11.1995 ISSUED BY THE 1ST RESPONDENT.

EXT.P2:- COPY OF THE GOVERNMENT ORDER G.O. (RT) 2007/91 H & FWD DT. 27.7.91.

EXT.P3:- COPY OF THE REPRESENTATION DT.15.12.95 SUBMITTED BY THE 2ND PETITIONER BEFORE THE 1ST RESPONDENT.

EXT.P4:- COPY OF THE LETTER NO.E 17128/95 DT. 16.1.96 ISSUED BY THE 1ST RESPONDENT TO THE PETITIONER.

EXT.P5:- COPY OF THE REPRESENTATION DT. 2.7.98 SUBMITTED BY THE 2ND PETITIONER BEOFRE THE 2ND RESPONDENT.

EXT.P6:- COPY OF THE PROCEEDINGS ISSUED BY THE DISTRICT MEDICAL OFFICER, INDIAN SYSTEMS OF MEDICINES THRISSUR GRANTING HIGHER SCALE OF PAY TO SHRI. A.M.ABDULKADAR, PHARMACIST GRADE II.

EXT.P7:- COPY OF THE LETTER NO.E1 3503/98 DT. 23.7.98 ISSUE BY THE 1ST RESPONDENT TO THE 2ND PETITIONER.

EXT.P8:- COPY OF THE REPRESENTATION GIVEN BY THE PETITIONER BEFORE THE 1ST RESPONDENT.

EXT.P9:- COPY OF THE LETTER NO.E2-13873/96/DISM DT. 28.11.96 SENT BY THE 2ND RESPONDENT TO THE 3RD RESPONDENT.

EXT.P10:- COPY OF THE REMINDER LETTER NO.E2 13873/96 DT.28.4.97 SENT BY THE 2ND RESPONDENT TO THE 3RD RESPONDENT.

EXT.P11:- COPY OF THE JUDGMENT OF THE HONOURABLE HIGH COURT IN OP.NO.23433/98 DT. 27.11.8.

EXT.P12:- COPY OF THE LETTER NO.55937/D1/110/H&FWD DT. 27.1.2000 ISSUE BY THE 3RD RESPONDENT TO THE PETITIONER.

EXT.P13:- COPY OF THE PROVISIONAL GRADATION LIST OF NON GADRE MEDICAL OFFICERS OF THE DIRECTORATE OF INDIAN SYSTEMS OF MEDICINE AS ON 3.6.98 ISSUED BY THE 2ND RESPONDENT.

/true copy/

KURIAN JOSEPH J.

O.P. Nos.9825/2000 & 15574/2001

Dated 20th June, 2007.

J U D G M E N T

Petitioners in O.P.9825/2000 are aggrieved since they are denied the benefit of non-cadre promotion to the post of Pharmacist Grade I, as per Government Order dated 27.7.1991. The stand taken in the counter affidavit filed by the Government is that the benefit was extended only to 140 Pharmacists appointed prior to 1.7.1988. Admittedly, the petitioners are appointed after 1.7.1988. The contention of the learned counsel for the petitioners is that there is no such stipulation that the benefit was intended only to those employees appointed prior to 1.7.1988. Be that as it may, it is stated in the counter affidavit that in the case of those employees who were appointed after 1.7.1988, but granted non-cadre promotion, steps are taken to review and recover such benefits.

2. The petitioners in O.P.15574/01 are aggrieved by the steps taken for recovery. According to them, the Director in Ext.P13 communication has informed the Government that the non-cadre Medical Officers are entitled to have the salary fixed on

the basis of Ext.P1, and that the impugned steps now taken are without any reference to Ext.P13. They also have a contention that at any rate, before taking steps for recovery of salary already drawn by them, they should have at least been given an opportunity to state their objections. In the above circumstances, the writ petitions are disposed of as follows :-

It will be open to the petitioners in both cases to make appropriate representations before the Government within a period of two months from today, in which case, the matter will be duly considered by the Government with notice to those who make the representations and appropriate orders will be passed within another four months. Subject to the petitioners approaching the Government as above, the interim order passed by this Court in C.M.P.No.24374/01 in O.P.No.15574/01 as far as recovery will continue till orders are passed by the Government.

KURIAN JOSEPH, JUDGE.

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KURIAN JOSEPH, J.

O.P. Nos.9825/00 & 15574/2001

J U D G M E N T

Dated 20th June, 2007.